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DEPARTMENT OF EDUCATION

34 CFR Chapter III

Final Waivers and Extension of the Project Period for the National Center for Information and Technical Support for Postsecondary Students with Disabilities Grant Program

AGENCY: Office of Postsecondary Education (OPE),  
Department of Education.

ACTION: Final waivers and extension of project period.

SUMMARY: The Secretary waives the requirements in the Education Department General Administrative Regulations that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. The waivers and extension would enable the project under Catalog of Federal Domestic Assistance (CFDA) number 84.116D to receive funding for an additional period, not to exceed September 25, 2021.

DATES: The waivers and extension of the project period are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Shedita Alston, U.S.

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#### SUPPLEMENTARY INFORMATION:

##### Background

On December 16, 2014, Congress passed the Further Consolidated Appropriations Act, 2015 (2015 Appropriations Act), Pub. L. 113-235. As noted in the explanatory statement (2015 Appropriations Act Explanatory Statement) submitted by the chairman of the Committee on Appropriations for the U.S. House of Representatives regarding the 2015 Appropriations Act, the appropriations for the Department included \$2,500,000 for a National Center for Information and Technical Support for Postsecondary Students with Disabilities (the Center), as authorized by section 777(a) of the Higher Education Act of 1965, as amended (HEA). See 160 Cong. Rec. H9307-01, H9841 (Dec. 11, 2014). Section 4 of the 2015 Appropriations Act provides that the 2015 Appropriations Act Explanatory Statement shall have the same effect with

respect to the allocation of funds as if it were a joint explanatory statement of a committee of conference.

On June 19, 2015, the Department of Education (Department) published in the *Federal Register* (80 FR 35323) a notice inviting applications (2015 NIA) for projects for fiscal year (FY) 2015 under the National Center for Information and Technical Support for Postsecondary Students with Disabilities (NCITSPSD) competitive grant program. The purpose of the Center is to provide technical assistance and information on best and promising practices for students with disabilities as they transition to or attend postsecondary education.

In September 2015, the Department made one 48-month award to the Association on Higher Education and Disability for their project entitled the "National Center for College Students with Disabilities."

The Department granted the Center a no-cost extension in September 2019, extending the current project period for this grantee through September 25, 2020.

On December 20, 2019, Congress passed the Further Consolidated Appropriations Act, 2020 (2020 Appropriations Act), Pub. L. 116-94. As noted in the explanatory statement (2020 Appropriations Act Explanatory Statement)

submitted by the chairwoman of the Committee on Appropriations for the U.S. House of Representatives regarding the 2020 Consolidated Appropriations Act, the appropriations for the Department included \$500,000 for the operation of the Center authorized under section 777(a) of the HEA. See 165 Cong. Rec. H11061-01, H11083 (Dec. 17, 2019). Section 4 of the 2020 Appropriations Act provides that the 2020 Appropriations Act Explanatory Statement shall have the same effect with respect to the allocation of funds as if it were a joint explanatory statement of a committee of conference.

#### Final Waivers and Extension

The Department is waiving the requirements in 34 CFR 75.250, which prohibit project periods exceeding five years, and the requirements in 34 CFR 75.261(c)(2), which limit the extension of a project period if the extension involves the obligation of additional Federal funds. The waivers and extension would enable the project under CFDA number 84.116D to receive funding for an additional one year period, not to exceed September 25, 2021.

We are waiving these requirements to provide the necessary time and funding for the current grantee to complete outstanding project activities, as outlined in its

2015 grant. Completion of these activities, including a required biannual report to Congress, is necessary to fulfill the purpose of the program as outlined in the HEA. With the awarding of a supplement, the Center will be able to continue to provide technical assistance and information on best and promising practices for students with disabilities as they transition to or attend postsecondary education.

Additionally, the \$500,000 amount that was appropriated under the 2020 Appropriations Act is only 20 percent of the amount provided by Congress for the program in FY 2015 and is insufficient to support a new, multiyear grant project period. We do not believe that it is the intent of Congress that the Department run a new grant program competition for the one year of funding appropriated by the 2020 Appropriations Act, as opposed to providing a supplement to the current grantee, because doing so would increase the burden on the potential applicants. Additionally, the comparatively nominal amount of funding that was appropriated for FY 2020 would create a great hardship for any newly funded applicant needing to bear responsibility for both start-up and operational costs, as well as other statutory requirements.

Under these waivers and extension of the project period--

(1) The current grantee is authorized to receive one continuation award.

(2) The Department will not announce a new competition or make new awards under the NCITSPSD competitive grant program in FY 2020.

(3) During the extension period, any activities carried out must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application from the 2015 NCITSPSD competition.

(4) The grantee must also continue to comply with the requirements established in the program regulations and the 2015 NIA.

The waivers of 34 CFR 75.250(a) and 75.261(c)(2) do not affect the applicability of the requirements in 34 CFR 75.253 (continuation of a multiyear project after the first budget period) to the current grantee receiving a continuation award as a result of the waivers.

In addition, these waivers do not exempt the current grantee from the account-closing provisions in 31 U.S.C.

1552(a), nor do they extend the availability of funds previously awarded to the current grantee.

Waiver of Notice and Comment Rulemaking and Delayed Effective Date under the Administrative Procedure Act

Under the Administrative Procedure Act (APA) (5 U.S.C. 553 et seq.) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency for good cause finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b) (B).

As the Court found in Metzenbaum v. Federal Energy Regulatory Commission, 675 F.2d 1282, 1291 (D.C. Cir. 1982), the opportunity for notice and comment where there is no discretion is "unnecessary." *Id.* (quoting 5 U.S.C. 553(b) (B)). The Court further stated that notice and comment for such a nondiscretionary action "might even have been 'contrary to the public interest,' given the expense that would have been involved in a futile gesture." *Id.* See also Lake Carriers' Ass'n v. E.P.A., 652 F.3d 1, 10 (D.C. Cir. 2011) (notice and comment rulemaking "would have served no purpose" where agency lacked the authority to

amend or reject the conditions at issue). As this waiver and extension fulfills our understanding of congressional intent for the \$500,000 appropriated in FY 2020 for the NCITSPSD grant program to go to the current grantee to fulfill the program's objectives during this fiscal year, the Department finds that there is similarly good cause to waive notice and comment rulemaking. The goals of the NCITSPSD grant program cannot be met by other potential applicants with the small amount of funding available for the NCITSPSD program in FY 2020.

The APA also requires that a substantive rule must be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). In addition to the reasons stated above, a delayed effective date would be contrary to the public interest because it might prevent the waivers and extension from taking effect prior to the expiration of the current project period. Therefore, the Secretary waives the delayed effective date provision for good cause.

#### Regulatory Flexibility Act Certification

The Regulatory Flexibility Act does not apply to this rulemaking because there is good cause to waive notice and comment under 5 U.S.C. 553.



## Paperwork Reduction Act of 1995

This notice of waivers and extension of project period does not contain any information collection requirements.

## Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for this program.

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Robert L. King,  
*Assistant Secretary for  
Postsecondary Education.*

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